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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

2002 JUN 26 PM 4:26

NEIL GAIMAN, and
MARVELS AND MIRACLES, LLC,

J W SKUPNIEWITZ
CLERK US DIST COURT
WD OF WI

Plaintiffs,

v.

Case No.: 02-C-0048-S

TODD MCFARLANE, and
TODD MCFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC.,
MCFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Defendants.

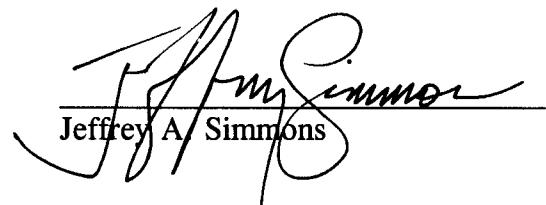
AFFIDAVIT OF JEFFREY A. SIMMONS

STATE OF WISCONSIN)
)
) ss.
COUNTY OF DANE)

Jeffrey A. Simmons, being duly sworn, deposes and states as follows:

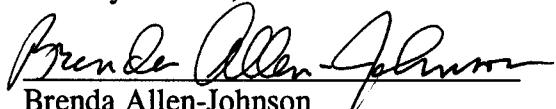
1. I am one of the attorneys representing plaintiffs Neil Gaiman and Marvels and Miracles, L.L.C. in this action.
2. This Affidavit is being submitted in support of Plaintiffs' Notice of Motion and Motion for Leave to File Surreply in Opposition to Defendants' Motion for Judgment on the Pleadings.
3. Attached as Exhibit A are true and correct copies of pages from the Deposition of Todd McFarlane taken June 20, 2002.

4. Attached as Exhibit B are true and correct copies of Exhibits 35 and 52 of the McFarlane deposition.



Jeffrey A. Simmons

Subscribed and sworn to me this
26th day of June, 2002.



Brenda Allen-Johnson

Notary Public
State of Wisconsin, County of Dane
My commission expires: 12/29/02.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NEIL GAIMAN and MARVELS AND)
MIRACLES, LLC.,)
)
)
Plaintiffs,)
)
)
-vs-) No. 02-C-0048-S
)
)
TODD MCFARLANE, TODD MCFARLANE)
PRODUCTIONS, INC., TMP INTER-)
NATIONAL, INC., MCFARLANE)
WORLDWIDE, INC. and IMAGE)
COMICS, INC.,)
)
Defendants.)
_____)

30(b) (6) DEPOSITION OF TODD MCFARLANE PRODUCTIONS, INC.
AND DEPOSITION OF TODD D.M. MCFARLANE

Volume 2
(Pages 133 - 256.)

Phoenix, Arizona
June 20, 2002
8:55 a.m.

Reported by:

PAUL GROSSMAN
AZ CCR #50028
CA CSR #1487

<p style="text-align: right;">Page 142</p> <p>1 BY MR. ARNTSEN:</p> <p>2 Q. You as an individual are a shareholder of</p> <p>3 Image and receive whatever kind of dividends or</p> <p>4 compensation would accrue from that as an individual,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Now we're going to start going through some</p> <p>8 documents and really what I'm going to be doing here,</p> <p>9 Mr. McFarlane, is sort of going back through the</p> <p>10 chronology of your relationship with Mr. Gaiman, which</p> <p>11 we pretty well covered -- which we went through</p> <p>12 yesterday, but now just in the context of some of the</p> <p>13 documents that were -- that were drafted on that.</p> <p>14 Can you identify what was previously marked</p> <p>15 as Exhibit 12?</p> <p>16 MR. KAHN: Do you want him to tell you what</p> <p>17 it is?</p> <p>18 MR. ARNTSEN: Yes. He doesn't necessarily --</p> <p>19 I'm not going to ask him in detail, you know, about word</p> <p>20 for word what it is. If he can tell us what it is.</p> <p>21 THE WITNESS: It appears to be the script</p> <p>22 that Neil wrote for Issue 9.</p> <p>23 It also appears to not be the complete</p> <p>24 script, though. It looks like it ends on page 15 and it</p> <p>25 would have been probably a 22 page comic.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. I don't understand the question.</p> <p>2 Q. Did these accompany the script that Neil sent</p> <p>3 to you?</p> <p>4 A. I don't recall, but I would assume yes.</p> <p>5 Q. And did Neil send this to you before you</p> <p>6 embarked on the art work for Spawn Issue 9?</p> <p>7 A. No. I did the cover and then -- because we</p> <p>8 have to get a cover out first for solicitation, so we</p> <p>9 did the cover with the character on the -- on the front</p> <p>10 and then eventually we had to get the writing, actually</p> <p>11 putting the book together.</p> <p>12 You can solicit, but at some point you have</p> <p>13 to actually do the book, so this -- this comes after</p> <p>14 putting out the cover. So, in beginning the process of</p> <p>15 putting the insides together.</p> <p>16 Q. So you got Exhibit 34 after you had drawn the</p> <p>17 cover, but before you started drawing the insides of the</p> <p>18 book, is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And what use did you make of these thumbnail</p> <p>21 sketches?</p> <p>22 A. Usually when writers do this they are looking</p> <p>23 for a pacing. You know, they are looking to sort of</p> <p>24 say, "Here's sort of the pacing that we have of the</p> <p>25 book." So you sort of look at it and most of the</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MR. ARNTSEN:</p> <p>2 Q. Okay. So --</p> <p>3 A. So a partial script it looks like.</p> <p>4 Q. Of Issue 9?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And do you recall whether you made any</p> <p>7 editorial changes to that script as submitted to you by</p> <p>8 Neil?</p> <p>9 A. No.</p> <p>10 Q. No, you don't recall or no, you did not?</p> <p>11 A. No, I don't recall.</p> <p>12 MR. ARNTSEN: All right. Mark this.</p> <p>13 (Deposition Exhibit Number 34 was then</p> <p>14 marked for identification.)</p> <p>15 BY MR. ARNTSEN:</p> <p>16 Q. Can you identify Exhibit 34?</p> <p>17 A. Neil, as I said earlier, used to write full</p> <p>18 scripts and then he would sometimes put thumbnails with</p> <p>19 it. I think these are the thumbnails that went with</p> <p>20 that partial script that you had shown me.</p> <p>21 Q. For Spawn Issue 9?</p> <p>22 A. For Spawn 9, right.</p> <p>23 Q. And do you recall when these were forwarded</p> <p>24 to you in connection with the process of creating Spawn</p> <p>25 Issue 9?</p>	<p style="text-align: right;">Page 145</p> <p>1 writers that do that just go, you know, "Do whatever you</p> <p>2 want with it," you know. "If you like what I got there</p> <p>3 fine, if you don't change it."</p> <p>4 Just it's, you know, you're the artist and</p> <p>5 I'm the writer and so you look at it and if anything</p> <p>6 sort of triggers an idea then you sort of move forward</p> <p>7 and if you don't, you sort of walk away from it. You</p> <p>8 modify. You are always modifying it.</p> <p>9 Q. So you have it as a reference point to use</p> <p>10 more or less as you choose as the artist, is that</p> <p>11 essentially it?</p> <p>12 A. Right.</p> <p>13 (Deposition Exhibit Number 35 was then</p> <p>14 marked for identification.)</p> <p>15 BY MR. ARNTSEN:</p> <p>16 Q. Identify Exhibit 35, please. Do you know</p> <p>17 what Exhibit 35 is?</p> <p>18 A. Not really.</p> <p>19 Q. Have you seen it before?</p> <p>20 A. No.</p> <p>21 Q. Do you recognize it as a copyright</p> <p>22 application for Spawn Issue 9?</p> <p>23 A. Yes, it looks like it.</p> <p>24 Q. And you're the copyright claimant, correct?</p> <p>25 A. No. It should be Todd McFarlane Productions.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. But looking down at item 4 on the first page 2 it says it's Todd Dean McFarlane, correct? 3 A. That's what it says, right. 4 Q. And up under item 2, do you see the name of 5 author? That's Todd Dean McFarlane, correct? 6 A. Right. 7 Q. And it's got your year of birth, correct? 8 A. Right. 9 Q. And you indicate -- you checked "yes" where 10 it says "Was this contribution to the work a 'work made 11 for hire,'" correct? 12 A. I don't believe I show this on -- 13 Q. You what? 14 A. I don't believe I filled this in. 15 Q. Did you authorize someone to fill this out on 16 your behalf? 17 A. Yep. That looks like Beth. 18 Q. And who's Beth? 19 A. She used to work for me years ago. 20 Q. And what did she do for you? 21 A. She was an assistant to one of the presidents 22 at the toy company. 23 Q. Who? 24 A. Paul Burke. 25 Q. Okay. And she was your authorized agent,</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. So you recall applying for a number of 2 copyrights for previous comic books in 1996? 3 A. I don't recall the date specifically. 4 Q. No, but generally. I guess what I'm 5 wondering about is what caused you to apply for a 6 copyright approximately three years after the issue came 7 out? 8 A. Probably I started having more lawyers 9 hanging around me, so -- 10 Q. Do you have any recollection in that regard 11 or is that -- 12 A. That's probably the closest thing to the 13 truth, so -- 14 Q. But do you recall that? 15 A. I don't recall. 16 Q. Okay. Do you recall addressing the issue of 17 why you did not list Neil as the author of the text of 18 Spawn Issue 9? 19 A. No. 20 Q. And do you know why it is that you're listed 21 individually as the copyright claimant instead of Todd 22 McFarlane Productions? 23 A. No. 24 (Deposition Exhibit Number 36 was then 25 marked for identification.)</p>
<p style="text-align: right;">Page 147</p> <p>1 correct? 2 A. It appears. 3 Q. And it states here that -- under item 2 you 4 state that you are the creator. It states that you're 5 the creator of the text and art work, correct? 6 A. Where am I looking? 7 Q. Nature of Authorship, item 2 a. 8 A. What did you want me to look at? 9 MR. KAHN: It says "Work for Hire" and then 10 "Nature of Authorship." 11 THE WITNESS: Oh, I see. 12 BY MR. ARNTSEN: 13 Q. Is that correct? 14 A. Right. 15 Q. But you weren't the creator of the text of 16 Spawn Issue 9, were you? 17 A. No. 18 Q. Neil was, right? 19 A. Right. 20 Q. Do you know -- do you recall the process that 21 caused you to apply for a copyright for Spawn Issue 9 in 22 April of 1996? 23 A. No. It probably wouldn't have been about 24 Issue Number 9. It would have been the comic books as a 25 whole.</p>	<p style="text-align: right;">Page 149</p> <p>1 BY MR. ARNTSEN: 2 Q. Take a look at Exhibit 36. Can you identify 3 what Exhibit 36 is? 4 A. Yes. It looks like the -- the -- some of the 5 script for a couple pages from Spawn Issue 26. 6 Q. And this was written by Neil? 7 A. Right. 8 Q. And did you make any changes to this portion 9 of the script before incorporating it into Spawn Issue 10 26? 11 A. I don't recall. 12 MR. ARNTSEN: Mark this. 13 (Deposition Exhibit Number 37 was then 14 marked for identification.) 15 BY MR. ARNTSEN: 16 Q. Take a look at Exhibit 37, please. 17 A. Okay. 18 Q. Can you identify what Exhibit 37 is? 19 A. What I think it is or -- or -- 20 Q. Yes. Have you seen it before? 21 A. No. 22 Q. Do you see that it purports to be a 23 Certificate of Registration for a copyright for Spawn 24 Issue 26? 25 A. Right.</p>

<p style="text-align: right;">Page 150</p> <p>1 Q. And you are listed as the author, correct? 2 A. Right. 3 Q. And you are listed as the copyright claimant, 4 correct? 5 A. Right. 6 Q. And it's dated January 20, 1995, correct? 7 A. Right. 8 Q. Does this at all refresh your recollection as 9 to why you would have applied for a copyright for Spawn 10 Issue 26 fifteen months before applying for a copyright 11 on Spawn Issue 9? 12 A. No. 13 Q. And it lists you as the author of the text of 14 Spawn Issue 26, correct? 15 A. What am I looking for? 16 Q. 2 a. 17 A. Right. 18 Q. And were you the author of the text of Spawn 19 Issue 26? 20 A. Most of it. 21 Q. Was Neil Gaiman the author of the remaining 22 portion of the text of Spawn Issue 26? 23 A. Right. 24 Q. Why didn't you list him here as a co-author? 25 A. I don't know. I didn't fill that out.</p>	<p style="text-align: right;">Page 152</p> <p>1 write them for free, he didn't want to be paid. So I 2 didn't think that would be fair. So I wanted to get him 3 some money. So I don't know if it was based on anything 4 other than wanting to give him some money for his 5 effort. 6 Q. Can you take a look at page number 347. Do 7 you see the check, the check number 1145, the bottom 8 half of that check where in the memo line it says 9 "Angela Intro"? 10 A. Okay. 11 Q. Does that represent the payment for this 12 portion of the script of Spawn 26? 13 A. It's possible, yes. 14 Q. Do you have any recollection in that regard? 15 A. No. I'd have to see if there was any 16 paperwork that accompanied that check. 17 Q. And do you have -- does this help refresh -- 18 just assume for the moment that this is the payment for 19 that. 20 A. Okay. 21 Q. It was \$3,300. 22 A. Okay. 23 Q. Does that refresh your recollection as to how 24 you came up with that number? 25 A. No. I'm -- it probably wasn't based on any</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. Beth did again? 2 A. Right. 3 Q. And again the copyright is claimed for you as 4 an individual, correct? 5 A. That's what it says. 6 Q. Do you have any recollection of the process 7 of filling out and submitting these copyright 8 registrations? 9 A. No. 10 MR. ARNTSEN: Mark this. 11 (Deposition Exhibit Number 38 was then 12 marked for identification.) 13 BY MR. ARNTSEN: 14 Q. Take a look through Exhibit 38, please. Can 15 you identify what Exhibit 38 is? 16 A. It appears to be checks sent to Neil Gaiman. 17 Q. From whom or what? 18 A. From Todd McFarlane Productions. 19 Q. Do you recall what you paid Neil for his 20 contribution to the script of Spawn 26? 21 A. Probably not exactly, but it was probably 22 around a thousand a page or something. 23 Q. Yes. Do you recall how you would have come 24 up with the calculation of what to pay? 25 A. Not really. I can -- again, Neil said he'd</p>	<p style="text-align: right;">Page 153</p> <p>1 formula. He did some work and I wanted to make sure he 2 got paid, so -- 3 Q. It was just essentially a number you thought 4 was fair? 5 A. Right. 6 Q. Do you recall whether you made any other 7 payments to Neil for the script for Spawn 26? 8 A. I don't recall. 9 Q. I'll show you what was previously marked 10 Exhibit 14. Mr. McFarlane, is that in your handwriting? 11 A. No. 12 Q. Do you recognize it as Terry Fitzgerald's 13 handwriting? 14 A. I think so. 15 Q. And did you sign it or -- do you see where 16 it's signed "Todd and Terry"? 17 A. Right. 18 Q. Did you sign that or did he just send a note 19 on behalf of both of you? 20 A. Yeah. 21 Q. The latter? 22 A. Yeah. It's all in his handwriting. 23 Q. And what does this relate to? 24 A. I think this is in reference to the Angela 25 mini series.</p>

Page 154	Page 156
1 MR. ARNTSEN: Mark that. 2 (Deposition Exhibit Number 39 was then 3 marked for identification.)	1 A. I believe Neil did. 2 Q. And did you receive these thumbnail sketches 3 in connection with the development of the Angela comics? 4 A. I don't recall. 5 Q. Would they have come to you? 6 A. I don't know. 7 Q. Did you have any involvement in the art work 8 for the Angela mini series? 9 A. I wasn't the artist on that book, unlike 10 Issue 9. Greg Capullo was the actual artist. 11 Q. So, did you have any involvement in the art 12 work? 13 A. Just in my conversations with -- talking Greg 14 through some of his problems if he had any or what he 15 wanted me to have in it visually. 16 Q. And do you have any recollection of receiving 17 these thumbnail sketches? 18 A. No. 19 Q. Take a look at Exhibit 45. And I'll 20 represent to you that Exhibit 45 is comprised of three 21 copyright registrations. 22 A. Okay. 23 Q. Do you recognize Exhibit 45 as copyright 24 registrations for Angela 1, 2 and 3? 25 A. I don't understand the question.
1 to. 2 Q. Okay. So if anyone would have, you would 3 have and you don't recall, is that correct? 4 A. Correct. 5 Q. And can you identify what Exhibits 42, 43 and 6 44 are? 7 Mark that. 8 (Deposition Exhibit Number 45 was then 9 marked for identification.)	1 Q. What do you understand Exhibit 45 to be? 2 A. They appear to be Certificates of 3 Registration. 4 Q. For Angela 1, 2 and 3? 5 A. Right. 6 Q. And you are listed as the copyright claimant 7 for those works, correct? 8 A. Right. 9 Q. And you are listed as the creator of the text 10 and art work for those works, correct? 11 A. Where am I looking there again? 12 Q. 2 a, Nature of Authorship. 13 A. Right. 14 Q. And you weren't the creator of the text or 15 the art work for those works, were you? 16 A. Right. 17 Q. Did you ever tell Neil that you were applying 18 for a copyright for Angela 1, 2 and 3? 19 A. I don't recall. 20 Q. Do you recall what you paid Neil for his work 21 for Angela 1, 2 and 3? 22 A. No. 23 Q. I'll show you a document that was previously 24 marked Exhibit 9 and I wonder whether that would refresh 25 your recollection at all.
10 BY MR. ARNTSEN: 11 Q. Can you identify what Exhibits 42, 43 and 44 12 are? 13 A. They appear to be thumbnail sketches for -- 14 Exhibit 42 -- although I can't be sure, but it says for 15 the Angela mini series Issue Number 1. 16 Exhibit 44 appears to be thumbnails that may 17 have been done for Angela mini series -- I guess it says 18 Number 3 here. 19 And Exhibit 43, although we got a duplication 20 in here. We -- we -- it's done twice here, the 21 duplication, but minus that it appears to be thumbnails 22 that may -- may have accompanied some of the work done 23 on Angela mini series Number 2. 24 Q. And do you know who drew those thumbnail 25 sketches?	Page 155

<p style="text-align: right;">Page 230</p> <p>1 A. Right.</p> <p>2 Q. And then you come to the publisher's royalty 3 of Angela art work, correct?</p> <p>4 A. Right.</p> <p>5 Q. And again that's 16 percent of the 323,000, 6 correct?</p> <p>7 A. Well, I lost you there.</p> <p>8 Q. You're multiplying the \$323,341.72 times 16 9 percent to come up with the 51,734.68, correct?</p> <p>10 A. Right.</p> <p>11 Q. Okay. What does the next row mean?</p> <p>12 A. Given -- it's giving a weight to an 13 individual card within the confines of it, which would 14 mean that the card set was called Spawn. It was based 15 on Spawn. The headline was Spawn. The title was Spawn. 16 It was listed as Spawn, Spawn, Spawn, Spawn. So, to say 17 that a Spawn card and a 20th ranked character would be 18 of equal value didn't make -- didn't make much sense.</p> <p>19 So there was a deduction that essentially was 20 from Spawn, the big boy. And so anything -- anything 21 less than Spawn isn't at the same value. And then 22 there's a number. Then it is multiplied.</p> <p>23 Q. So you concluded that the Angela character or 24 characters were worth 50 percent of the Spawn character, 25 is that what that means?</p>	<p style="text-align: right;">Page 232</p> <p>1 property?</p> <p>2 A. Well, again looking at the documents from the 3 bankruptcy trustee and what it was they put down there 4 and then later on whatever it was that they handed over, 5 probably getting some lawyer to look at it to sort of 6 go, "What did I just buy, you know?" So --</p> <p>7 Q. And do you ever recall finding out somebody 8 letting you know what you just bought with regard to 9 intellectual property rights?</p> <p>10 A. Well, again I don't recall what the opinion 11 was once it came back, but "whatever was in that pool is 12 yours now."</p> <p>13 Q. Okay.</p> <p>14 A. And that there was no disputes at that point 15 over anything.</p> <p>16 Q. And do you recall whether Mr. Fitzgerald 17 forwarded a copy of Exhibit 16 and the attached 18 documents to you?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you ever recall prior to acquiring the 21 rights out of the Eclipse bankruptcy looking at any 22 contracts that might have been in place between Eclipse 23 and Mr. Gaiman?</p> <p>24 A. No:</p> <p>25 Q. Do you recall any discussions concerning any</p>
<p style="text-align: right;">Page 231</p> <p>1 A. Right. Which probably was a generous number 2 at the time.</p> <p>3 Q. Okay. I just need to understand the 4 calculation process.</p> <p>5 And again you don't recall if that refers to 6 just Angela or Angela, Medieval Spawn and Cogliostro, 7 correct?</p> <p>8 A. Right. I'd have to look at the set.</p> <p>9 Q. Okay. Okay. Here's a small portion that 10 you're probably going to want to mark confidential, 11 attorneys eyes. I'm going to ask him -- let's go off 12 the record just for a second.</p> <p>13 (Discussion off the record.)</p> <p>14 (The following excerpt was designated 15 "Confidential.")</p> <p>16 (Discussion off the record.)</p> <p>17 (Deposition Exhibit Number 52 was then 18 marked for identification.)</p> <p>19 BY MR. ARNTSEN:</p> <p>20 Q. Can you identify what Exhibit 16 is? 21 Have you seen Exhibit 16 before?</p> <p>22 A. No, not that I recall, but --</p> <p>23 Q. What did you do, if anything, to ascertain 24 what intellectual property rights of Eclipse you were 25 obtaining out of the bankruptcy as opposed to tangible</p>	<p style="text-align: right;">Page 233</p> <p>1 such contracts?</p> <p>2 A. No, because it was -- it was an Eclipse 3 bankruptcy, so it was Eclipse, not specifically for any 4 one character.</p> <p>5 Q. Okay. You were just getting whatever rights 6 Eclipse had?</p> <p>7 A. Right.</p> <p>8 Q. Take a look at Exhibit 52. 9 (Deposition Exhibits Numbers 53 and 54 10 were then marked for identification.)</p> <p>11 BY MR. ARNTSEN:</p> <p>12 Q. Did you have a chance to look at Exhibit 52?</p> <p>13 A. Yes.</p> <p>14 Q. If you look at the second to last page, page 15 number 1391, is that your signature?</p> <p>16 A. Yes.</p> <p>17 Q. Did you direct your attorney to file this 18 trademark application?</p> <p>19 A. Right.</p> <p>20 Q. In October of 1997?</p> <p>21 A. I told him to -- to go and get the paperwork 22 done for a trademark.</p> <p>23 Q. When did you tell him to do that?</p> <p>24 A. Probably shortly after my last conversation 25 with Terri Cunningham, which would have been maybe in</p>

Page 234

Page 236

1 August, August some time probably, September. Late
 2 August, early September.
 3 Q. Okay. Did you communicate to Mr. Gaiman in
 4 any way that you were going to be doing this?
 5 A. No.
 6 Q. As far as Mr. Gaiman knew he had the rights
 7 to Miracleman, is that right?
 8 A. You'd have to ask Mr. Gaiman that question.
 9 Q. He didn't know anything to the contrary,
 10 right?
 11 A. You'd have to ask Neil that question.
 12 Q. Why did you ask your lawyer to file the
 13 trademark application for Miracleman at this time?
 14 A. We were -- we're now at the tail end of some
 15 of -- sort of some of these conversations here and again
 16 I thought we were -- I thought we were pretty close. I
 17 thought we were getting pretty close. We were finally
 18 going to get a deal done here.
 19 But to get near the finish line made me feel
 20 pretty good and given this is August, the movie's coming
 21 out, I'm trying to enjoy life. To find out that some of
 22 the information that had been a constant source of
 23 discussion may not have been completely forthright was
 24 becoming wearisome to me, and so again at some point the
 25 straw broke the camel's back. Neil in good faith had

Page 235

Page 237

1 been receiving moneys trying to get the calculations
 2 that we were giving him based on what we thought was
 3 truthful information and he had my money and my
 4 character and was giving me back something that --
 5 essentially something that we had that he had
 6 represented that he had which from my perspective he
 7 didn't and it was -- I was never going to get money back
 8 from Neil. I didn't think that would ever be true. So
 9 I had to grab something. The only thing that was still
 10 left was I gave him money and Miracleman. The money was
 11 gone and so I -- I told him to get Miracleman back.
 12 Q. Okay. Because you had obtained your rights
 13 from Eclipse to Miracleman, whatever those rights were,
 14 in early 1996, correct?
 15 A. Well, whenever the auction was held.
 16 Q. Okay. Take a look at Exhibit 16.
 17 A. Right.
 18 Q. But you didn't do anything with regard to
 19 registering any intellectual property rights until the
 20 fall of 1997, correct?
 21 A. I don't know. This is the first time that we
 22 did something or later on I know there was a lapse or
 23 something they notified me on.
 24 Q. What do you recall with regard to that, with
 25 regard to the lapse?

1 A. That they -- that they -- well, it's my --
 2 Jon is my lawyer.

3 Am I allowed to talk about that?
 4 MR. KAHN: This is something Jon told him. I
 5 didn't realize that.

6 If you heard something from Jon, your lawyer,
 7 then that's covered by privilege. There are documents
 8 that we produced and they can answer that.

9 You should not get into any discussions about
 10 the documents or the situation that you had with Jon
 11 Chick, your attorney. You can talk about discussions
 12 you had concerning these matters with non-attorneys, but
 13 your discussions with Jon Chick are privileged.

14 THE WITNESS: Okay.

15 BY MR. ARNTSEN:

16 Q. Were all of your discussions concerning the
 17 lapse with Attorney Chick?

18 A. Right.

19 Q. Did you have any discussions on that subject
 20 with anyone else?

21 A. No.

22 Q. Okay. Take a look at Exhibit 53. Is that
 23 your signature on the second to last page?

24 A. Yes.

25 Q. And that's you're signing as to the

1 declarations set forth therein, correct?

2 A. Correct.

3 Q. And you are stating that you're either the
 4 owner of the trademark sought to be registered or
 5 entitled to use such mark in commerce, correct?

6 A. Right.

7 Q. And what did you do to satisfy yourself that
 8 those were true statements?

9 A. Well, again those were discussions with Jon,
 10 so --

11 Q. Okay. Anything else other than discussions
 12 with your lawyer?

13 A. No.

14 Q. All right. Take a look at Exhibit 54. Is
 15 that your signature on the bottom?

16 A. Yes.

17 Q. What prompted you to sign and file this
 18 document?

19 MR. KAHN: The same caution, Todd. If what
 20 prompted you was a conversation with Jon Chick, you can
 21 answer to other things but not to the subject of the
 22 conversation with Jon Chick. You can identify Jon Chick
 23 as the person that prompted you to do this, but that's
 24 all you can say.

25 THE WITNESS: All right. So after

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FORM SE
UNITED STATES COPYRIGT OFFICE

REGISTRATION NUMBER

TX 4-256-095



EFFECTIVE DATE OF REGISTRATION

APR 12 1996

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS SERIAL ▼

1

Spawn

Volume ▼	Number ▼	Date on Copies ▼	Frequency of Publication ▼
1	9	March 1993	Monthly

PREVIOUS OR ALTERNATIVE TITLES ▼

2

NAME OF AUTHOR ▼

Todd Dean McFarlane

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

1961

Was this contribution to the work a "work made for hire"? Yes No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

Citizen of ▶ Canada

OR Domiciled in ▶ USA

If the answer to either of these questions "Yes," see detailed instructions

Anonymous? Yes NoPseudonymous? Yes No

NOTE

Under the law, the "author" of a

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

Collective Work Other: Creator: Text / Artwork

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Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

- a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼
None

- b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼
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Livonia, MI. 48150

Area Code & Telephone Number ▼

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CERTIFICATION* I, the undersigned, hereby certify that I am the

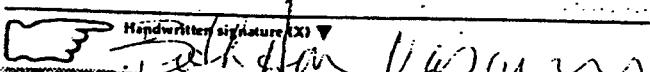
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- author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of **Todd Dean McFarlane**
Name of author or other copyright claimant, or owner of exclusive right(s) ▼

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.
BethAnn Vaisanen

date ▼


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Todd Dean McFarlane

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

1961

Was this contribution to the work a "work made for hire"? Yes No
Name of Country
OR { Citizen of ► Canada
Domiciled in ► USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes" see detailed instructions ..

NOTE

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.
□ Collective Work Other Creator: Text / Artwork

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No
Name of Country
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WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
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OR { Citizen of ►
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Complete this information Month ► December Day ► 15 Year ► 1994 U.S.A
ONLY if this work has been published.

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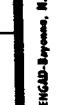


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Page 1 of 2

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DERIVATIVE WORK OR COMPILED Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

- a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼
 None

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- b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼
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 TMP International / BethAnn Vaisanen

11904 Farmington Road

Livonia, MI. 48150

Area Code & Telephone Number ▼

(313) 425-0551

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number**CERTIFICATION** I, the undersigned, hereby certify that I am the

Check one ▶

- author
 other copyright claimant
 owner of exclusive right(s)

 authorized agent of Todd Dean McFarlane

Name of author or other copyright claimant, or owner of exclusive right(s) ▼

if the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

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date ▼

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TM 00310

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DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation. **6**

- Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. **10**
- None

- Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. **11**
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CERTIFICATION I, the undersigned, hereby certify that I am the **19**

Check one **20**

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- other copyright claimant
- owner of exclusive right(s)
- authorized agent of **21** Todd Dean McFarlane

Name of author or other copyright claimant, or owner of exclusive right(s) **22**

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TM 00312

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Library of Congress
Washington, D.C. 20550

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\$2,500—\$75,000

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This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM SE
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 4-010-007



EFFECTIVE DATE OF REGISTRATION

MAR 8 1995

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DAY

YEAR

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Angela

Volume ▼	Number ▼	Date on Copies ▼	Frequency of Publication ▼
1	3	February 1995	Monthly

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NAME OF AUTHOR ▼

a Todd Dean McFarlane

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

1961

Was this contribution to the work a "work made for hire"? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of ▶ Canada Domiciled in ▶ USA	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Pseudonymous? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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Todd Dean McFarlane
12240 S. Honah Lee Ct.
Phoenix, AZ. 85044

TM 00313

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MAR 08 1995

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Page 1 of 1 page

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DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

- a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼
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6

- b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼
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11904 Farmington Road

Livonia, MI. 48150

Area Code & Telephone Number ▼

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CERTIFICATION I, the undersigned, hereby certify that I am the:

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Name of author or other copyright claimant, or owner of exclusive right(s) ▼

The work identified in this application and that the statements made in this application are correct to the best of my knowledge.

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Date ▼

TM 00314

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1000—75,000

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Dec 18, 1997

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

JON R CHICK
15155 FOGG ST
PLYMOUTH MI 48170

ATTORNEY
REFERENCE NUMBER

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A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Office of Trademark Program Control. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 75/379919
FILING DATE: Oct 27, 1997
REGISTER: Principal
LAW OFFICE: 107
MARK: MIRACLEMAN
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers in typed form
FILING BASIS: Sect. 1(b) (Intent to Use)

ATTORNEY: JON R CHICK

OWNER: Todd McFarlane Productions, Inc (ARIZONA, Corporation)
12240 South Honah Lee Court
Phoenix, ARIZONA 85044

FOR: Printed matter, namely comic books and posters
INT. CLASS: 016

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED



TM 01384

Express Mail #: EI392735865US

Mailed: 10/27/97

Applicant: Todd McFarlane Productions, Inc.

Mark: MIRACLEMAN

Class: 16-comic books

Received: Letter, Application based on intent-to-use, Declaration with Power of Atty., Drawing page & check in the amount of \$245 to cover filing fee.

TM 01385



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Label 11-B October 1995

TM 01386

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BANK ONE, ARIZONA, NA
PHOENIX, AZ 85004
91211221

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10/22/1997

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Assistant Commissioner For Trademarks
Legal Fees

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10/22/1997

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TM 01387

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Jon R. Chick
Name

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10/27/97
Date of Deposit

Express Mail Label #: EI392735865US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Todd McFarlane Productions, Inc.
Mark: MIRACLEMAN

Box NEW APP FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

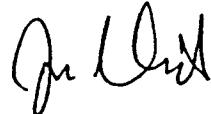
Re: Application for Registration of Mark Based on *Bona Fide*
Intent-to-Use the mark in Commerce.

Dear Sir:

Enclosed please find the following for registering the above-referenced mark based on the Applicant's *bona fide* intent to use the mark in commerce: Application for registration based on Intent-to-Use pursuant to Section 1(a) of the Lanham Act; Signed Declaration with Power of Attorney; Drawing page; and A Return Addressed Post Card.

Our check in the amount of \$245 is also enclosed to cover the filing fee for the Application based on Intent-to-Use.

Very truly yours,



Date: 10/27/97

Jon R. Chick
Reg. No. P55021
15155 Fogg Street
Plymouth, Michigan 48170
Tel. No. 313-414-3500
Fax No. 313-414-3510

Express Mail Label #:EI392735865US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Todd McFarlane Productions, Inc.
(An Arizona Corporation)
12240 South Honah Lee Court
Phoenix, Arizona 85044

Mark: MIRACLEMAN

Class: 16

Box NEW APP FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Application for Registration on the Principal Register
Based on Intent-to-Use Mark

Sir:

The above identified Applicant has a *bona fide* intention to use the mark shown in the accompanying drawing in commerce in connection with the following goods or services:

Printed matter, namely comic books and posters,

in International Class 16, and requests that the mark be registered pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 *et seq.*, as amended).

Applicant intends to use the mark in connection with the recited goods or services by applying it to the goods or their containers, to tags or labels affixed thereto, or on displays associated with the goods or their sale.

TM 01390

Express Mail Label #: EI392735865US

Page 2

Applicant: Todd McFarlane Productions, Inc.
Mark: MIRACLEMAN

Declaration and Power of Attorney

The undersigned being duly warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or deceive; and that all statement made of his own knowledge are true and all statements made on information and belief are believed to be true.

Applicant hereby appoints Jon R. Chick, a member of the Bar of the State of Michigan, with full power of substitution and revocation, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration. Applicant hereby directs that all communications be sent to:

Jon R. Chick
15155 Fogg Street
Plymouth, Michigan 48170
Tel. (313) 414-3500 Fax. (313) 414-3510
State of Michigan Reg. No. P55021

OCT 21 1997

Date

T.McF92/1025
Todd McFarlane
Chief Executive Officer
Todd McFarlane Productions, Inc.

Express Mail Label #:EI392735865US

Page 3

Applicant: Todd McFarlane Productions, Inc.
Mark: MIRACLEMAN

Drawing

Applicant: Todd McFarlane Productions, Inc.
An Arizona corporation

Address: 12240 South Honah Lee Court
Phoenix, Arizona 85044

Class: Int. Class No. 16 "Printed matter"

Goods: Printed matter, namely comic books and posters

Basis for
Registration: 15 U.S.C. 1051(b)

MIRACLEMAN

TM 01392